

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-970079**  
**Sales and Use Tax**  
**For The Period: 1990 Through 1995**

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**ISSUES**

**I. Sales and Use Tax: Registration**

**Authority:** IC 6-2.5-8-1

The taxpayer protests the inclusion of an Indiana contractor in the assessment and also the inclusion of invoices billed to the taxpayer's sister company.

**II. Tax Administration: Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is an Indiana corporation. The taxpayer owns and operates nursing homes for the elderly in Indiana. More facts will be provided as needed below.

**I. Sales and Use Tax: Registration**

**DISCUSSION**

The taxpayer entered into contracts for the improvement of realty. The contracts were lump sum contracts. Under 45 IAC 2.2-3-10 and 45 IAC 2.2-3-12 a contractor may use one of two billing methods: (1) lump sum, where the contractor pays the tax on the material; or (2) time and material, where the recipient pays sales tax on the material and the contractor collects the tax as an agent for the state. The taxpayer argues that the

inclusion of a resident Indiana contractor was in error. The taxpayer states that at the time of the audit the auditor tried to find where the contractor (hereinafter “C”) was registered—but was unsuccessful. The taxpayer has provided the Department with C’s information—including the FID and SID numbers. After the hearing the Department checked the contractor information provided by the taxpayer, and found that C has been registered for sales tax purposes since September 25, 1990.

The taxpayer also argues that invoices of its sister company (hereinafter “P”) from 1990, 1992, 1993, and 1994 were wrongly included in the audit. The taxpayer states that P was billed the invoices in question, and that P is registered in Indiana and files a separate sales and use tax return. According to the taxpayer, the error arose from the fact that the taxpayer and its sister company use a common paymaster.

### **FINDING**

With regard to the lump sum contracts, the taxpayer is sustained to the extent that no exemption certificates were issued by the taxpayer to the contractor. As for the inclusion of invoices from the taxpayer’s sister corporation, the taxpayer is denied since the taxpayer still has the burden of showing that the tax was paid by its sister corporation.

## **II. Tax Administration: Penalty**

### **DISCUSSION**

The taxpayer was assessed for multiple items and issues—most of which were not protested by the taxpayer. Nonetheless, the taxpayer further requests the abatement of the negligence penalty. Indiana Code 6-8.1-10-2.1 states, in part, that if “the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty.” Regulation 45 IAC 15-11-2 also states,

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The Department finds that the deficiency was not due to reasonable cause. The taxpayer did not take prudent care in establishing a use tax accrual system to self-assess tax on taxable purchases. There was a large disparity between the tax paid and the tax due, and several of the issues had been addressed before in a previous audit.

### **FINDING**

The taxpayer’s protest is denied.